

UNITED STATES OF AMERICA
DISTRICT COURT
DISTRICT OF MASSACHUSETTS

CRIMINAL NO. 2004-10385-MEL

UNITED STATES OF AMERICA

v.

JEROME WEEKES

RESPONSE TO OPPOSITION TO MOTION FOR RECONSIDERATION OF ORDER
DENYING MOTION FOR NEW TRIAL AND REQUEST FOR RULING ON CLAIM OF
INEFFECTIVE ASSISTANCE OF COUNSEL

Now comes the defendant and files this response to the government's opposition to the defendant's claim of ineffective assistance of counsel. The government contends that Weekes's contention that Brown admitted to him that Brown carried the gun from the City Hall Annex parking lot to the Verizon parking lot is uncorroborated. The government stated that Weekes's suggestion that the fact that Brown was initially charged possessing the gun in October 2004 serves as corroboration is "misleading and false". (Gov. Opp., p. 5, fn. 4) The government claimed that Brown was charged with possessing the gun "before the gun was found" based on a Brockton Police policy. The government pointed to the trial testimony of Brockton Police Officer Michael Darrah, who stated that pursuant to police policy, until it is known who actually had the gun, "[E]veryone gets charged the same way". (Id.)

The government continues to misstate the facts and/or seeks to influence this Court with inaccurate police testimony.

Previously the government tried to convince the Court that Weekes testified that he and Brown ran towards the dark SUV from which a person was shooting at them. (See Defendant's Supplemental Memorandum in Support of Motion for New Trial, pp. 4-5). Now, the government seeks to convince the Court that Brown was only initially charged by the police with possessing the gun for a short time until the gun was found.

During the early morning hours of Saturday, October 23, 2004, the police may have charged Brown with the gun before it was found, but Brown was arraigned on the Brockton District Court criminal complaint alleging that he possessed the gun a number of days later (Monday, October 25, 2004).¹

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Defense counsel has attached a certified copy of Brown's Brockton docket sheet, number 0415 CR 7667. The docket sheet demonstrates that on October 25 (which is two days after the police arrested Weekes and Brown and had discovered the gun wherever it was discovered) an application was made for a criminal complaint.

Brown was charged with carrying a firearm without a license, possessing a firearm without a FID card and discharging a firearm within 500 feet of a building.

1. The application was allowed and a complaint against Brown was issued on October 25, 2004.
2. Brown was arraigned on October 25, 2004.
3. There were pretrial conferences on December 14, 2004 and January 27, 2005.
4. On March 15, 2005, Brown's motion to dismiss was allowed by the court, over the Commonwealth's objection.

This Court should take judicial notice that in Massachusetts district courts, in the ordinary course, a criminal complaint is issued only after a police officer applies for one with the Court Clerk when the court is open. Thus, in order for a complaint to have issued against Brown, a Brockton police officer went to the Brockton Court on Monday, October 25, 2004 and applied for the complaint.

Weekes's contention that a criminal complaint, charging Brown with possessing the gun, was issued in October 2004 against Brown and not dismissed until months later is not false. It is not misleading. It is accurate and serves as at least some corroboration that Brown admitted to Weekes that Brown possessed the gun. If the police didn't believe that Brown possessed the gun on October 23, 2004, the police wouldn't have applied for a complaint two days later, by which time the police knew where the gun was discovered. On March 15, 2005, the Commonwealth of Massachusetts wouldn't have objected to Brown's motion to dismiss if there wasn't evidence indicating that Brown possessed the gun on October 23, 2004.

The only misleading and false suggestion made to this Court is the United States's contention that Brown was only initially charged by the police with possessing the gun for a short time until the gun was found.

Respectfully Submitted,
JEROME WEEKES,

By his attorney:

J. THOMAS KERNER
MA BBO # 552373
343 Commercial St. Unit 104
Boston, MA 02109
(617) 720-5509

Case 1:04-cr-10385-MEL
RECORD OF CRIMINAL CASE

DOCKET NO.
0415 CR 007667

Filed 07/28/2008 Page 1 of 3

**Trial Court of Massachusetts
 District Court Department**



DEFENDANT NAME KELVIN BROWN		COURT NAME & ADDRESS BROCKTON DISTRICT COURT 215 MAIN ST P.O. BOX 7610 BROCKTON MA 02303-7610 (508) 587-8000	
DEFENDANT ALIAS(ES)			

DEFENDANT ADDRESS 70 HAWTHORNE STREET		CITY/TOWN ROSLINDALE	STATE MA	ZIP CODE 02131
SEX M	DATE OF BIRTH 6/09/81	CITY OF BIRTH BOSTON	STATE OF BIRTH MA	SOCIAL SECURITY NO. 016-62-2429
MOTHER'S MAIDEN NAME CLARISOL, CORA		FATHER'S NAME KELVIN		
PCF NO. 2315621	SID NO.	DRIVERS LICENSE NO.	LICENSE STATE	

CASE INFORMATION

NO. COUNTS 5	POLICE DEPT BRO	POLICE INCIDENT NO. 04013510	OFFENSE LOCATION BROCKTON	ARREST DATE 10/23/04	MV CITATION NO.
CURRENT DEFENSE ATTORNEY JOHN P. BENZAN			ATTORNEY TYPE PRIVATE COUNSEL		
CURRENT PROSECUTOR			COMPLAINANT CESARINI, SGT. ANDREW H.		

OFFENSE AND JUDGMENT INFORMATION

COUNT: 1 OFFENSE DATE: OCTOBER 23, 2004
 269/10/J FIREARM, CARRY WITHOUT LICENSE

JUDGMENT DATE: 3/15/05 JUDGMENT JUDGE: HON. DAVID G. NAGLE JR.
 JUDGMENT METHOD: DISMISSED JUDGMENT: DISMISSED

COUNT: 2 OFFENSE DATE: OCTOBER 23, 2004
 269/10/G FIREARM WITHOUT FID CARD, POSSESS

JUDGMENT DATE: 3/15/05 JUDGMENT JUDGE: HON. DAVID G. NAGLE JR.
 JUDGMENT METHOD: DISMISSED JUDGMENT: DISMISSED

COUNT: 3 OFFENSE DATE: OCTOBER 23, 2004
 272/53/F DISORDERLY CONDUCT

JUDGMENT DATE: 3/22/05 JUDGMENT JUDGE: HON. DAVID G. NAGLE JR.
 JUDGMENT METHOD: HEARING JUDGMENT: DISMISSED

COUNT: 4 OFFENSE DATE: OCTOBER 23, 2004
 266/120 TRESPASS

JUDGMENT DATE: 3/22/05 JUDGMENT JUDGE: HON. DAVID G. NAGLE JR.
 JUDGMENT METHOD: HEARING JUDGMENT: DISMISSED

COUNT: 5 OFFENSE DATE: OCTOBER 23, 2004
 269/12E FIREARM, DISCHARGE WITHIN 500 FT OF BLDG

JUDGMENT DATE: 3/15/05 JUDGMENT JUDGE: HON. DAVID G. NAGLE JR.
 JUDGMENT METHOD: DISMISSED JUDGMENT: DISMISSED

PAGE 1	DATE RECORD PRINTED 7/28/08	A TRUE COPY ATTEST	CLERK/MAGISTRATE <i>Ken P. Quader</i>
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BAIL/BOND INFORMATION

BAIL TYPE	BOND AMT SET	CASH AMT SET	DATE SET	JUDGE
CASH ONLY		\$500.00	10/25/04	HON. PAUL J. MC CALLUM

FINES/FEES/COSTS ASSESSED

COUNT #	FEE CODE	DESC	AMOUNT ASSESSED	AMOUNT PAID/WAIVED	BALANCE DUE
	CT COSTS--COMM		\$250.00	\$250.00	\$.00
	CT COSTS--COMM		\$250.00	\$250.00	\$.00
	TOTAL		\$500.00	\$500.00	\$.00

PAYMENT HISTORY

RECEIPT NO.	RECEIPT DATE	RECEIPT AMOUNT	METHOD OF PAYMENT
145088	3/15/05	\$500.00	BAIL APPLIED

BAIL HISTORY

RECEIPT#:	22611	DATE POSTED:	10/25/2004	AMOUNT POSTED:	\$500.00
		METHOD:	CASH		
APPLIED TO FINES/COSTS:		03/15/2005		\$500.00	

DOCKET ENTRIES

DATE	CODE	DOCKET ENTRY	JDG/MAG	ACTION DATE
10/25/04	AC	APPLICATION FOR COMPLAINT FILED		
10/25/04	ZCI	COMPLAINT ISSUED	KML	
10/25/04	ARR	ARRAIGNMENT SCHEDULED FOR		10/25/04
10/25/04	PI	PROBATION INTAKE FORM PRINTED	KML	
10/25/04		COUNT 4 DISTURBANCE NO PROBABLE CAUSE FOUND	KML	
10/25/04	AIC	ACTION IN COURT FORM		
10/25/04	BRW	BAIL REVOCATION WARNING (276 \$58) GIVEN DEFT		
10/25/04	ARRH	ARRAIGNMENT HELD	PJM	10/25/04
10/25/04	PT	PRETRIAL HEARING SCHEDULED FOR		12/14/04
10/25/04	DI	DEFT INDIGENT BUT WANTS PRIVATE COUNSEL		
10/26/04		PCF CHANGED FROM T0065289		
12/14/04	C	CONTINUED	DGN	12/14/04
12/14/04	PT	PRETRIAL HEARING SCHEDULED FOR		1/27/05
12/14/04	PCD	PRIVATE COUNSEL FOR DEFENDANT		
12/14/04		555874 BENZAN, JOHN P.		
1/27/05		ATTORNEY BENZAN NOT PRESENT		
1/27/05	C	CONTINUED	DGN	1/27/05
1/27/05	PT	PRETRIAL HEARING SCHEDULED FOR		3/15/05
3/15/05		COMMONWEALTH OBJECTS TO DISMISSAL		
3/15/05	JHH	JUDGE'S HEARING HELD	DGN	3/15/05
3/15/05	CFPD	CONTINUED FOR PAYMNT (THEN TO BE DISMD) UNTIL	DGN	3/22/05
3/15/05	JE	JUDGMENT ENTERED	DGN	
3/22/05	PAID	PAYMENT IN FULL CONFIRMED	DGN	3/22/05



3/22/05
3/22/05

ZDD

DEFENDANT DISCHARGED ALL COUNTS; CASE CLOSED
AMENDED JUDGMENT OR SENTENCE ENTERED

DGN
DGN

PAGE

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7/28/08

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CLERK/MAGISTRATE

Ken P. Buder